

**Case Name:** *West Dulwich Service Station Ltd on Behalf of West Dulwich Action Group v London Borough of Lambeth* [2025] EWHC 1111 (Admin) (09 May 2025)

**Full case:** [Click Here](#)

**Commentary:**

The Claimant, West Dulwich Action Group (WDAG), brought a statutory challenge against the lawfulness of two experimental traffic orders (ETOs) made by LB Lambeth which together established a low traffic neighbourhood. The claim proceeded on three grounds. Ground 1 proposed that the Council's consultation on the ETOs was unfair and/or the Council had regard to immaterial considerations when deciding to make the ETOs. Ground 2 proposed that the Council's decision to make the ETOs failed to have regard to material considerations, and/or was irrational in that it concluded that due regard was had to statutory guidance published by the Department for Transport relating to the ETOs, and/or was inadequately reasoned. Ground 3 proposed that the Council failed to comply with its statutory duties of consultation under the relevant regulations and/or that it had unlawfully fettered its discretion in how it approached its decision to make the ETOs.

The judgment provides key reminders of the importance of proper consultation and relevant considerations which must be taken into account within decision-making processes. Whilst the Court reaffirmed the need for effective consultation processes, the threshold for consultation to be deemed unlawful is a high hurdle which was not reached in this case. Decision makers would be advised to clearly demonstrate the key materials which inform any decision taken. Failure in this case to have regard to an "impressive" 53-page report containing information "highly relevant to the decision confronting officers" resulted in the claim being allowed.

**Background**

The Council consulted on a series of proposals together constituting a wider traffic management scheme for the area. Feedback was sought via a drop-in session, responses to a questionnaire and local businesses were separately consulted. The Parties disputed various aspects of the consultation, although the court established there was clear opposition to the Council's plans as identified by the Council itself.

The Council declined to re-evaluate the proposals following receipt of a petition with more than 1,000 signatures, deferring further evaluation for subsequent statutory consultation. A local residents' association wrote to the Council's chief executive (the "RA Letter") expressing concerns as to the adequacy of the consultation's process, particularly the failure to comply with the well-known 'Gunning principles' (which principles were recently endorsed by the Supreme Court in *R (Moseley) v Haringey London Borough Council* [2014]: "First, that consultation must be at a time when proposals are still at a formative stage. Second, that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third ... that adequate time must be given for consideration and

*response and, finally, fourth, that the product of consultation must be conscientiously taken into account in finalising any statutory proposals").*

On 16 February 2024, officers published a delegated report summarising the outcome of the non-statutory consultation and setting out the detail of the proposals, recommending the Council proceed to the next stage of the traffic management proposals and undertake statutory consultation. The same residents' association then wrote to the Council expressing concerns that the contents of the RA Letter had not been taken into account. The Council approved the proposals in line with the officer's recommendations.

On 17 March 2024 the DfT published draft statutory guidance entitled "Implementing low traffic neighbourhoods" (the "Guidance"). The guidance included clear warnings as to the ramifications of poor consultation processes.

The Council responded to the RA Letter on 11 April 2024, confirming that the RA Letter had not been taken into account, noting there would be a statutory consultation within the first six months of the trial of the traffic management scheme.

On 3 May 2024, the Claimants issued a letter before claim to the Council alleging unfair consultation by ignoring the RA Letter and noting the existence of the draft Guidance. On 23 May 2024 the Council responded to suggest there were no grounds for judicial review, but before an ETO is made the Council would revisit the decision in light of the RA Letter, the Guidance and further consultation responses, and that further consultation would be with statutory consultees only. The Claimant responded on 5 June 2024 to note that the Council had discretion to extent the scope of further consultation, to no response from the Council. The statutory consultation ran from 30 May 2024 to 20 June 2024.

During the statutory consultation regarding the ETOs, an online meeting between the Claimant and the Council took place, in which the Claimant delivered a 53-page document outlining its concerns in respect of the ETOs, which document raised 23 questions for the Council to respond to (the "Claimant's Report").

Following the additional statutory consultation, a second officers' delegated report was published, noting the feedback from the residents' association and the new draft Guidance. The report contained a detailed response to the RA Letter. The report did not address the Claimant's Report. The Council again decided to approve the proposals in line with the officer's recommendations. The ETOs were made on 6 August 2024.

### **Judgment**

The judge identified the high degree of overlap between the grounds of the claim. As such the following summary details the elements of the judgment which relate to the pertinent facts outlined above.

#### **Failures of consultation**

The Court held that whilst elements of the consultation could have been improved upon, there was no failure so "clearly and radically wrong" so as to render the

consultation process unlawful. Regulation 6 of the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 provided the Council with discretion to consult the Claimant. Any claimant would have to demonstrate "Something truly compelling" before a failure to exercise such unconditional discretion could be considered unlawful.

### The Claimant's Report

The Court noted previous guidance on the standard applied to reasons for a decision as follows: *"The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved"* (*South Buckinghamshire District Council v Porter (No 2)* [2004]).

The Court considered the Claimant's Report to be "impressive" adding further information to that included in the RA Letter, the material contained therein being "highly relevant to the decision confronting officers". The Council was unable to present sufficient evidence to demonstrate the Claimant's Report was duly considered in the decision-making process. As such the Court concluded that the Claimant's Report did not form part of the Council's reasons for its decision, and *"Its content was highly relevant to the issues being deliberated upon and this it was a material consideration. The failure to have regard to the Claimant's Report was a serious failing, rendering the decision to make the Orders unlawful in the Wednesbury sense"*. The Court had no sympathy for the Council's position that the experimental period of the ETOs provided an opportunity for statutory consultation prior to the ETOs becoming permanent.

### The Guidance

The draft Guidance warns against failure to properly engage with local communities when considered low traffic neighbourhoods. The Court acknowledged that the second officers' report did refer to the Guidance and included a statement that the Guidance had been complied with. The Court was not persuaded with the Claimant's submission that there needed to be *"substantive and demonstrable consideration and application of its terms to the decision-making process followed by the Council"*.

The claim was allowed on Ground 1 and dismissed on Grounds 2 and 3. Directions as to appropriate relief are to be provided at a later date.